Supreme Court of the United States

OCTOBER TERM, 1957

No. 3

FRANCISCO ROMERO,

Petitioner,

against

INTERNATIONAL TERMINAL OPERATING CO., COMPANIA TRASATLANTICA, also known as SPANISH LINE, and GARCIA AND DIAZ, INC. and QUIN LUMBER CO., INC.,

Respondents.

BRIEF OF THE GOVERNMENT OF DENMARK, *AMICUS CURIAE*

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Statement

This brief, *amicus curiae*, is filed by The Government of Denmark because the legal principles and practical problems involved in this case are of the gravest concern to all maritime nations, particularly those nations, including Denmark, whose economic survival depends to a major degree on its shipping and ship-carrying industry.

In *Lauritzen* v. *Larsen*, 345 U. S. 571, this Honorable Court held that the fortuitous fact that a Danish seaman

had signed on a Danish ship at a United States port, under shipping articles which provided that all claims against the Danish shipowner were to be dealt with under the laws of Denmark, did not require the application of United States law to a maritime tort occurring outside the territorial waters of the United States but did require the application of the law of the flag.

In the instant case, this Court has been asked to apply the Jones Act to the claim of a Spanish seaman who had signed on a Spanish ship at a Spanish port under shipping laws which provided that all claims against the Spanish shipowner were to be dealt with under the laws of Spain and who had been injured aboard the ship in the port of New York.

It would not be appropriate for this brief to deal with the procedural problems involved. But it does seem appropriate and of supreme importance for this brief to point out the vital reasons why the *Lauritzen* case should be not only affirmed but extended to govern the instant case by the application of the law of the flag.

POINT I

The United States of America should not impose its substantive law on foreign seamen and shipowners who have agreed in advance that the law of their nationality would be applied to claims between them.

Throughout the world maritime nations have developed systems of law establishing the respective rights and liabilities of seamen and shipowners who sail under the flag of those nations. These systems differ greatly but are adapted to the peculiar social and economic structure of the nation in which they apply. This is as it should be, for living standards vary greatly and what would constitute adequate wages or adequate compensation in one country

might well be totally inadequate or grossly excessive in another country. It would be just as inequitable for a high income nation to force an employer from a low income nation to compensate a seaman on the basis of the high income nation's standards as it would be to force a seaman from a high income country on a ship of his country's flag to accept compensation of a low income nation's standard. In brief, an American seaman, wherever his ship happens to be at the time of an injury, should be compensated on the basis of American standards. Similarly, a Spanish or a Danish seaman serving on their nation's vessels should be compensated on the basis established by the laws of their vessel's flag.

In the present case, the lower court has found that under the Spanish law the plaintiff-petitioner has a right to a lifetime pension and to the equivalent of maintenance and cure. This is what the parties to the shipping articles expected to pay and receive, in the event of an injury, when the articles were signed. They did not intend nor contemplate that their rights and obligations would be determined by the law of some foreign country—possibly one less favorable to the seaman. It was natural and reasonable for them to contract for the law they knew, the law of their nationality, their ship's flag, the place of the contract, to govern their relationship. It was not their intention that one party could choose the law most favorable to his position in the event of a claim.

This Court will not be unmindful that the Danes have been a sea-faring people for a long time. Whatever may be said of their exploits in distant ages, their economic survival, even more today than in times past, depends on their ships. This Court, which deals daily with the business and livelihood of men, will, it is respectfully hoped, not be oblivious to the economic factors so vital to Denmark which will be affected by the Court's decision on the legal principles involved in the instant case.

By far the greater part of Danish ships are engaged in carrying the goods of other nations to all parts of the world, although to some extent it is also a "shipping", as well as a "carrying" nation. This carrying and shipping industry is very much the largest dollar earner of the so-called "invisibles" which in the past two or three years have barely made up the deficit in Denmark's foreign trade. What might seem a relatively minor extra burden to the United States could be a major disaster to Danish shipping and hence to Denmark's entire economy. A decision which would have the effect of imposing American law and American standards of compensation on Danish shipowners for injuries received by Danish seamen on Danish ships could be gravely deleterious to the economic health, as well as being an unwarranted invasion of the sovereignty, of Denmark.

The Danish Government, while recognizing the need for adjustment and progress in its social legislation to meet the changes and challenges of a dynamic age, is not without pride in its laws, revised in June, 1952, for the protection, care and relief of its seamen and for governing the relations between the seamen and the shipowners.

These laws governing the rights and obligations of Danish shipowners and Danish seamen grew out of the experience, the wisdom, and the social conscience of the Danish people, and reflect their will. Denmark believes, however, that it does not have the right to impose, if it could, its standards upon foreign shipowners in their relations with citizens of the vessel's flag. And the Danish Government is of the opinion, especially since the *Lauritzen* case, that this Court shares that belief with respect to the United States. For Denmark, or any other maritime country, to hold otherwise would practically destroy the "most venerable and universal rule of maritime law"—that questions concerning the internal economy and discipline of a vessel are to be determined by the law of the vessel's

flag. It was therefore greatly reassuring to Denmark, that this Court, in the *Lauritzen* case cited, p. 578:

> "the long needed admonition of Mr. Chief Justice Marshall that 'an act of congress ought never to be construed to violate the law of nations if any other possible construction remains . . . .' ",

and further said, p. 581:

> "But the virtue and utility of sea-borne commerce lies in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality."

POINT II

Comparison of the seven factors of the *Lauritzen* case with those of the instant case compel the conclusion that the choice of law governing the two cases should be the same.

1. *Place of the Wrongful Act.*—

In the *Lauritzen* case, the Danish seaman was injured on board a Danish vessel in a Cuban port. In the instant case, the Spanish seaman was injured on board a Spanish vessel in a United States port. This Court clearly gave little weight to the solution of *lex loci delicti commissi* in cases of shipboard torts, saying at p. 584:

> "* * * the territorial standard is so unfitted to an enterprise conducted under many territorial rules and under none that it usually is modified by the more constant law of the flag."

The fortuitous place of the accident in the instant case like the fortuitous place of contract in the *Lauritzen* case makes this territorial factor of slight importance in comparison with the law of the flag and all it implies.

2. *Law of the Flag.*—

In the *Lauritzen* case, the Danish seaman was injured on board a Danish vessel and in the instant case a Spanish seaman was injured on board a Spanish vessel. This Court gave cardinal importance to this factor of the Law of the Flag in deciding the *Lauritzen* case and expounded with great care the reasons why. As was pointed out, aside from the historic argument for the application of the law of the flag to all matters concerning the ship's internal affairs and not affecting the rights of third parties, the fact is that "there must be some law on shipboard" and "it cannot change at every change of waters and no experience shows a better rule than that of the state that owns her" (345 U. S. 585). And in *United States* v. *Flores*, 289 U. S. 158, as quoted in the *Lauritzen* case, this Court said:

> " 'And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require . . .'"

The Court of Appeals for the Second Circuit, in *Taylor* v. *Atlantic Maritime Co.*, 179 F. 2nd 597, *cert. den'd* 349 U. S. 915, said:

> "* * * On the other hand, if the seaman is serving on a foreign ship, and if in addition he has signed articles in a foreign port, obviously there can be no recovery either in tort or in contract, even though, as in The Paula, supra, the injury happens on board ship in an American port" (P. 598).

Similarly, in *Gambera* v. *Bergoty*, 132 F. 2d 414, 415, *cert. den'd*, 319 U. S. 742, the same court said:

> "We decided in The Paula, 2 Cir., 91 F. 2d 1001, that a German citizen who had signed the articles in Germany and shipped as a member of the crew of a German ship, could not avail himself of the act. He had chanced to suffer injury while she was in the harbor of New York, a port of call upon a voyage beginning and ending in Germany. The same ruling was made in The Magdapur, D. C., 3 F. Supp. 971, and by Judge Goddard in *Plamals* v. *SS Pinar del Rio*, 1925 Am. Mar. Cas. 1309, affirmed in 2 Cir., 16 F. 2d 984, and affirmed on other grounds in 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed. 827."

The lower court cases, just quoted, are consistent with the Court's discussion on this point in the *Lauritzen* case and their conclusion should be adopted by this Court in the present case. On reason as well as lower court precedent, it is proper and equitable for this Court to refer plaintiff-petitioner to his Spanish remedies.

3. *Allegiance or Domicile of the Injured.*—

In both the *Lauritzen* case and in the instant case, the seaman's nationality and the ship's coincided "without resort to fiction". Applicable to both cases are the words of this Court in the *Lauritzen* case, in saying at p. 587 that the seaman's "presence in New York was transitory and created no such national interest in, or duty toward, him as to justify intervention of the law of one state on the shipboard of another".

4. *Allegiance of the Defendant Shipowner.*—

There was no doubt in the *Lauritzen* case that the owner was a Dane by nationality and domicile and there is no doubt that in the instant case the owner is Spanish by nationality and domicile.

5. *Place of Contract.*—

The place of contracting in the *Lauritzen* case was the port of New York and this Court found it to be "fortuitous". In the instant case, the place of contracting was Spain. Again the words of this Court are applicable to the instant case, when it said, pp. 588-9:

> "But if contract law is nonetheless to be considered, we face the fact that this contract was explicit that the Danish law and the contract with the Danish union were to control. Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply."

6. *Inaccessibility of Foreign Forum.*—

Just as this Court found in the *Lauritzen* case that the seaman was not disadvantaged from being in New York because his claims could be made through the Danish Consulate, so, in the instant case, the District Court found that the seaman could assert his rights by demand upon the Spanish Consul in New York.

7. *The Law of the Forum.*—

The words of this Court in the *Lauritzen* case are conclusive here. At p. 591, the Court said:

> "Jurisdiction of maritime cases in all countries is so wide and the nature of its subject matter so far-flung that there would be no justification for altering the law of a controversy just because local jurisdiction of the parties is obtainable."

CONCLUSION

It is respectfully submitted that this Court should affirm the dismissal of the complaint.

Dated, New York, N. Y.,
January 9, 1958.

Respectfully submitted,

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